

A BILL TO BE ENTITLED
AN ACT

1 To enact the "DeKalb School Board Transparency Act;" to provide a code of ethics for the
2 DeKalb County School System; to provide for prohibited practices; to provide for disclosure;
3 to provide for sanctions on appointed officers and employees of the school system for
4 violations; to provide for an ethics commission; to provide for membership; to provide for
5 appointment and vacancies; to provide for eligibility; to provide for duties and powers; to
6 provide for compensation; to provide for complaints against board members; to provide for
7 hearings and actions; to provide for sanctions; to provide for appeals; to provide for a
8 training program; to provide for related matters; to provide for an effective date; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "DeKalb School Board Transparency Act."

13 **SECTION 2.**

14 As used in this Act, the term:

- 15 (1) "Board" means the DeKalb County Board of Education.
- 16 (2) "Commission" or "ethics commission" means the ethics commission created by
17 Section 5 of this Act.
- 18 (3) "Relative" means an elected official's, officer's, or employee's spouse and the
19 following relationships by consanguinity or affinity: father, mother, son, daughter,
20 brother, sister, grandparent, and grandchild. For purposes of this Act, the term "relative"
21 shall also include any other person living in the household of the elected official, officer,
22 or employee.

23

SECTION 3.

24

(a) Except as otherwise provided by general law, no elected official, appointed officer, or employee of the DeKalb County School System or of any office, department, or agency thereof shall knowingly:

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(1) Engage in any business or transaction with or have a financial or other personal interest, direct or indirect, in the affairs of the DeKalb County School System which would result in a financial benefit, except for a financial benefit of a nominal or incidental amount, to the official, appointed officer, employee, or relative of such person or which would tend to impair the independence of judgment or action in the performance of official duties;

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(2) Engage in or accept private employment from or render services for private interests when such employment or service is incompatible with the proper discharge of such person's official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties;

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(3) Disclose information or use information, including information obtained at meetings which are closed pursuant to Chapter 14 of Title 50 of the Official Code of Georgia Annotated, concerning the property, government, or affairs of the DeKalb County School System or any office, department, or agency thereof that is not available to members of the general public and that has been gained by reason of his or her official position for his or her personal gain or benefit, to advance his or her financial or other private interest, or to advance the financial or private interest of any other person or business entity;

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(4) Represent private interests in any action or proceeding against the school system or any office, department, or agency thereof;

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(5) Vote on or otherwise participate in the negotiation or the making of any contract of the board with any business or entity in which he or she, or his or her relative, has a financial interest;

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(6) Solicit, accept, or agree to accept gifts, loans, gratuities, entertainment, transportation, lodging, meals, any ticket of admission, discounts, payment, or service, except those of a value less than \$50.00, from any employee, student, parent, person, firm, or corporation which to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the school system or any office, department, or agency thereof; provided, however, that an elected official who is a candidate for public office may accept campaign contributions and services in connection with his or her campaign;

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(7) Advertise business and professional services to the school system or its employees for personal gain;

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(8) Use school system resources for personal or commercial enterprise;

- 60 (9) Vote or otherwise participate in an appointment, employment, or promotion decision
61 of the board or school system involving a relative;
- 62 (10) Vote or otherwise participate in an appointment, employment, or promotion
63 decision of the board or school system of a person when the public official knows or
64 should know that such vote or participation would create a direct or indirect monetary
65 benefit or economic opportunity for such public official or his or her relative;
- 66 (11) Have a personal interest, directly or indirectly, in school system real estate, school
67 textbooks, or school materials and supplies of any kind whatsoever;
- 68 (12) Sell, solicit, or offer for sale to the board or to any official or employee of the board,
69 directly or indirectly, any kind of real estate, textbooks, or school materials and supplies,
70 or receive any salary, bonus, or commission on any such sale;
- 71 (13) Have a financial interest in school buses, bus equipment or supplies, provide
72 services for buses owned by the board, or sell gasoline to the board from a corporation
73 in which the board member is a shareholder;
- 74 (14) Use property of the school system for personal benefit or profit except in
75 accordance with policies and procedures promulgated by the board;
- 76 (15) Vote or participate in discussions or deliberations at any meeting of the board or any
77 committee of the board of any issue before the board in which the board member or a
78 relative of the board member has matters involving consideration of his or her conduct,
79 matters which would inure to his or her financial or personal interests, or matters which
80 would be a conflict of interest for such person; or
- 81 (16) Serve on any public authority, board, commission, or other body or agency other
82 than the DeKalb County Board of Education during his or her term as a member of the
83 board.

84 (b) No elected official shall:

- 85 (1) As a consequence of his or her position accept any honoraria. As used in this
86 paragraph, the term "honoraria" means a payment of money or anything of value for any
87 appearance, discussion, speech, or article by such official, or for travel and subsistence
88 expenses in excess of any actual and necessary expenses in connection with such
89 appearance, discussion, or speech; or
- 90 (2) Either directly or indirectly solicit membership in any professional organization or
91 labor union which represents employees of the school system.

92 (c)(1) Any elected official, appointed officer, or employee of the school system who has
93 any financial interest, directly or indirectly, in any contract or matter pending before or
94 within any office, department, or agency of the school system shall disclose such interest
95 in writing to the board. Any board member who has a financial interest in any contract
96 or matter pending before the board shall disclose such interest, in writing, and such

97 disclosure shall be entered on the records of the board. The disclosure of any salary
98 received by a board member from the school system or any entity doing business with the
99 school system may be accomplished by naming the entity and position held by the board
100 member with such entity. Interest and dividends from entities doing business with the
101 school system which are listed on a national stock exchange or have more than 100
102 stockholders do not have to be disclosed. Likewise, the disclosure of any salary received
103 by a relative of the board member may be accomplished by naming the relative and the
104 position held. The board member also shall disqualify himself or herself from
105 participating in any decision or vote relating thereto.

106 (2) Any contract between the school system and another party shall contain a provision
107 that the contract is voidable or rescindable at the discretion of the board at any time if any
108 elected official, appointed officer, or employee has any interest in such contract and does
109 not disclose such interest in accordance with the provisions within this Act.

110 (3) The provisions of paragraphs (1), (11), (12), and (13) of subsection (a) of this section
111 shall not apply to any business transaction:

112 (A) In which any financial or other personal interest has been disclosed fully pursuant
113 to paragraph (1) of this subsection;

114 (B) Which has been noticed to the public in the legal organ of DeKalb County in a
115 manner that discloses, at a minimum:

116 (i) The material terms of such transaction; and

117 (ii) The name, title, and interest in the transaction of any person to whom, but for the
118 provisions of this paragraph, the provisions of paragraphs (1), (11), (12), or (13) of
119 subsection (a) of this section would otherwise apply;

120 (C) On which the public is provided a reasonable opportunity to comment at a regular
121 meeting of the board prior to any vote by the board on approving the transaction;
122 provided, however, that such opportunity for public comment shall be held at least 30
123 days after publication of the notice required by subparagraph (B) of this paragraph; and

124 (D) Which, after providing the opportunity for public comment pursuant to
125 subparagraph (C) of this paragraph, has been approved by a majority vote of the board:

126 (i) Upon a finding by the board that the transaction serves the best interests of the
127 school system and the taxpayers of DeKalb County;

128 (ii) Which vote is taken prior to the execution of any agreement related to the
129 transaction and any performance or payment related thereto; and

130 (iii) Which vote is noted by a proper entry on the minutes of the board.

131 (d) Prior to January 31 of each year, each elected official shall disclose publicly the identity
132 of any relative employed by the DeKalb County School System to the executive assistant to
133 the board on such form as prescribed by the board.

134

SECTION 4.

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(a) Appointed officers and employees of the school system may be punished for violation of the provisions of this Act as provided in this section.

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(b) Appointed officers and employees not subject to civil service or covered by the provisions of Official Code of Georgia Annotated Section 20-2-940, et seq., shall have the right to request a hearing before the board upon written charges being provided to such officer or employee. At such hearing, the officer or employee shall have the right to be heard, to be represented by counsel, and to require the attendance of witnesses and the production of relevant books and papers. If, after the hearing, the accused board member is found to have violated the provisions of this Act as alleged, he or she may be suspended or dismissed from the service of the school system by a majority vote of the members of the board.

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(c) Employees covered by the provisions of Official Code of Georgia Annotated Section 20-2-940, et seq., shall be subject to suspension, dismissal, or nonrenewal in accordance with the provisions of that general law.

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(d) Employees subject to civil service rules, upon a violation of this Act, shall be subject to suspension or dismissal in accordance with the provisions of this Act and the personnel rules and regulations adopted by the board.

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SECTION 5.

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(a) Board members shall be punished for violations of this Act as provided in this section. The authority to punish ethical violations by members of the board shall be vested exclusively in the DeKalb County School System ethics commission created pursuant to this section and not in the board, except as otherwise provided by general law.

141

(b)(1) The DeKalb County Legislative Delegation to the General Assembly shall establish a seven-member ethics commission to consider ethics complaints brought against a board member. Each member of the delegation may nominate up to two candidates and the members of the commission shall be elected by majority vote of the delegation. When the commission is first established, three persons will be appointed to serve four-year terms, and four persons will be appointed to serve two-year terms. Thereafter, members shall serve terms of four years. Each member of the commission shall hold office from the date of appointment until the end of the term for which he or she was appointed. Members of the commission shall not be eligible for reappointment. If a vacancy occurs on the commission, the delegation shall within 45 days appoint a person to fill the unexpired term.

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(2) Before the commission is established, the delegation shall determine whether all members of the commission shall be residents of DeKalb County or whether all such

169 members shall be selected from outside the county. Once such decision is made, it shall
170 be irrevocable and may be changed only by legislation.

171 (3) The members of the delegation should make their initial nominations within 30 days
172 after the effective date of this Act, and the delegation shall vote on the first members of
173 the commission within 60 days after the effective date of this Act.

174 (4) The delegation shall appoint successors to members of the commission whose terms
175 are due to expire, in the same manner as for appointing the initial members, with the
176 nominations made at least 60 days before the expiration of the term and a vote made at
177 least 30 days prior to such date.

178 (c) A person is eligible to serve as a member of the ethics commission if that person, while
179 serving:

180 (1) Is at least 21 years old and a registered voter in his or her county of residence;
181 (2) Is not an employee of the DeKalb County Board of Education or a relative or a
182 business associate of any member of the board;

183 (3) Does not hold any elected or appointed office and is not a candidate for any office
184 in the government of the United States, the State of Georgia, or DeKalb County;

185 (4) Has not provided a financial contribution of more than \$100.00 to or worked
186 significantly in the political campaign of any current member of the board;

187 (5) Is not a relative of a person who provided a financial contribution of more than
188 \$100.00 to or worked significantly in the political campaign of any current member of
189 the board; and

190 (6) Has undergone a criminal background check and has not been convicted of a felony.

191 (d)(1) Members of the ethics commission shall be compensated on a per-meeting basis
192 at a rate determined by the board and based on the appropriation of funds. A commission
193 member must be in attendance in order to receive compensation.

194 (2) The ethics commission shall elect one member to act as chairperson for a term of two
195 years or until a successor is duly elected. The chairperson shall have the same voting
196 rights as the other commission members. The commission shall also elect one member
197 to act as vice chairperson for the same term. If the office of chairperson or vice
198 chairperson is vacated in any manner before the expiration of the term, the commission
199 shall elect a member to fill the unexpired term. If any member of the commission
200 repeatedly fails to carry out his or her official duties, attend meetings of the commission,
201 or adhere to the ethical code of conduct as provided by this Act or other applicable state
202 or federal law, that member may be removed from the commission by vote of the
203 majority of the other members of the commission.

204 (3) The board office shall provide staff support to the ethics commission. The board shall
205 annually establish and fund a budget for operations of the commission, with expenditures

206 from this budget to be authorized and carried under budgetary controls established by the
207 board. It is the intention of the General Assembly to seek state funding of the commission
208 within two years after July 1, 2010, and the obligation of the board to provide and fund
209 a budget for the commission shall terminate when and if state funding becomes effective.

210 (4) Five members of the commission shall constitute a quorum.

211 (5) The commission shall establish guidelines relating to sanctions for various offenses
212 consistent with the provisions of this Act.

213 (6) The commission shall have the authority to retain legal counsel as needed.

214 (7) The commission shall be authorized to adopt a seal for use in the conduct of its
215 official business.

216 (e)(1) Any citizen eligible to vote in DeKalb County or any employee of the DeKalb
217 County School System may file a complaint alleging a violation by a board member of
218 the standards established by this Act or other applicable state or federal law by filing it
219 with the commission. The complaint shall be in writing and verified under oath.

220 (2) The chairperson of the ethics commission shall immediately forward a copy of the
221 complaint by certified mail to the board member against whom the complaint was filed,
222 along with a copy to each member of the board. A complaint must be filed within six
223 months of the date of the alleged violation or, in the case of concealment or
224 nondisclosure, within six months of the date the alleged violation should have been
225 discovered after due diligence.

226 (3) Within 30 days of receipt of a complaint, the ethics commission shall meet to review
227 the complaint to determine the complaint's credibility and whether the complaint alleges
228 a violation which, if proven true, would warrant sanction. Such meeting shall not be open
229 to the public. If, after reviewing the complaint, the commission by majority vote
230 determines that no good and sufficient cause exists for a determination that a violation
231 exists, the commission may dismiss the complaint and shall report said dismissal to the
232 board and the complaining party.

233 (f) If the commission determines that good and sufficient cause exists for a determination
234 that a violation has occurred, the commission shall conduct a formal public hearing. The
235 commission shall at least 20 days prior to the hearing notify the board member charged with
236 a violation of the date, time, and place for the hearing by certified and regular mail at the
237 person's last known address. Notice shall be complete upon mailing of the notice. At the
238 hearing, the commission shall hear sworn testimony from all witnesses it deems relevant.
239 Formal rules of evidence shall not apply, but the commission shall have the authority to
240 exclude witnesses or testimony which it deems irrelevant. The hearing shall be recorded by
241 a certified court reporter. The commission is authorized to issue subpoenas on behalf of any
242 party and for the appearance of any party or documents as provided by law. A party desiring

243 the issuance of a subpoena shall at least ten days before the hearing request the commission
244 to issue the subpoena. Upon receiving such request, the commission shall be required to
245 issue the subpoena at least three days prior to the hearing. Hearings shall be open to the
246 public and shall comply with all state and federal open meetings and open records laws.

247 (g) The accused board member shall have the following rights:

248 (1) To be represented by counsel;

249 (2) Upon written notice provided by the accused board member to the commission, to
250 view all written or recorded statements or physical evidence in the possession of the
251 commission or its agents relating to the alleged violation and to be presented with a list
252 of all witnesses sufficiently prior to the hearing to allow the accused board member to
253 prepare for such hearing; provided, however, that the accused board member so electing
254 shall be required to allow the commission to view reciprocal information relating to the
255 alleged violation sufficiently prior to the hearing to allow the commission to prepare for
256 the hearing. Such reciprocal information shall include recorded statements and physical
257 evidence in the possession of the accused board member or his or her agents as well as
258 a list of all witnesses. This paragraph shall be deemed to have been automatically
259 invoked, without the written notice, when the accused board member has sought
260 discovery pursuant to Chapter 11 of Title 9, the "Georgia Civil Practice Act," where such
261 discovery material is the same as the discovery material that may be provided under this
262 paragraph when a written notice is filed pursuant thereto. Except as provided in this
263 paragraph, nothing in this subsection is intended to authorize discovery or inspection of
264 attorney work product. No witness shall be compelled to speak with the accused board
265 member or the commission or their respective agents prior to the hearing;

266 (3) To subpoena, through the commission, any relevant documents or witnesses at any
267 location where the commission shall conduct a hearing, provided that the subpoena is
268 served on the person or entity being subpoenaed at least 24 hours prior to the hearing.

269 In the event that a person or entity fails, refuses, or neglects to comply with a subpoena
270 so issued, the party requesting the subpoena may file a motion in the Superior Court of
271 DeKalb County for a rule nisi hearing, which may be heard by the superior court in the
272 same manner as for a subpoena issued by said court. If at such rule nisi hearing, the court
273 determines that the person or entity who is the subject of the motion should be held in
274 contempt, then the contemnor may be punished in the same manner and to the same
275 extent as for contempt of a subpoena issued by the court;

276 (4) To cross-examine all witnesses testifying at the hearing;

277 (5) To view any exculpatory written or recorded statements or physical evidence in the
278 possession of the commission sufficiently prior to the hearing to allow the accused board
279 member to prepare for such hearing; and

(6) Unless otherwise excluded pursuant to subsection (f) of this section, to present any evidence and testimony in his or her defense.

(h) If the commission determines from clear and convincing evidence presented during the hearing that the accused board member committed the offense of which he or she is accused, the commission shall issue written findings and shall censure or reprimand the board member or order the removal of the board member from office.

(i) The commission shall notify the board and the board member of any action it takes pursuant to subsection (h) of this section within five days of its decision by sending a certified letter to the chairperson and vice chairperson of the board, the accused board member, and the accused board member's attorney, if any. The accused board member shall provide the commission with an address to which the commission's decision may be mailed, and notice of the decision shall be deemed to have been delivered on the day it was posted to such address.

(j) If the commission orders removal of a board member from office, the board member shall immediately lose all voting privileges and other privileges as a board member, pending the resolution of any appeal.

(k) Any appeal of the commission's decision shall lie in the Superior Court of DeKalb County. The decision of the commission shall become effective within 10 days unless within such period the accused board member files a petition for review or other legal action in the court.

(I) No member of the ethics commission or any person acting on behalf of the ethics commission, operating within the course and scope of this section, or any person bringing a complaint before the commission, shall be liable to any person for any damages arising out of such action; provided, however, that this subsection shall not apply to any person bringing before the commission a complaint that he or she knows to be false or which he or she should have known to be false were it not for that person's intentional disregard of the veracity of the complaint.

SECTION 6.

The board shall provide for a mandatory training program for persons who are elected or reelected to the board and to persons who are newly appointed to the commission. Such training shall be completed within 60 days of such election, reelection, or appointment. The training program shall include an explanation of the prohibitions contained in Section 3 of this Act and the practices and procedures contained in Section 5 of this Act. The board may contract with an institution of the University System of Georgia or any certified institution or individual qualified to perform such training, and the cost shall be borne by the DeKalb County School System. No appointed member of the commission shall be eligible to

316 participate in any function of the commission until he or she has completed such training
317 program.

318 **SECTION 7.**

319 This Act shall become effective upon its approval by the Governor or upon its becoming law
320 without such approval.

321 **SECTION 8.**

322 All laws and parts of laws in conflict with this Act are repealed.